



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 23, 1998

Mr. Ray Simmons
Assistant Chief Of Police
City of McKinney Police Department
130 S. Chestnut Street
McKinney, Texas 75069

OR98-2275

Dear Mr. Simmons:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118195.

You inform us that the City of McKinney Police Chief (the "city") received a request for "any arrest/offense/incident reports," concerning several named individuals. You have submitted the request and ask our office to review the request for compliance with act.¹

Pursuant to section 552.301(b) of the Government Code, a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the specific information requested or representative samples nor general written comments stating the reasons why the stated exception applies to the requested information as required by section 552.301(b).

¹We note that the requestor has indicated, through his open records request, that he was "questioned" concerning his motivation in gathering the information at issue. Section 552.222 of the Government Code prohibits the inquiry by the governmental body into the motives of the person applying for inspection or copying of records. *See* Open Records Decision No. 542 (1990). Consequently, the requestor's purpose for obtaining these records is not relevant to an analysis as to whether the records are subject to required public disclosure. *Id.*

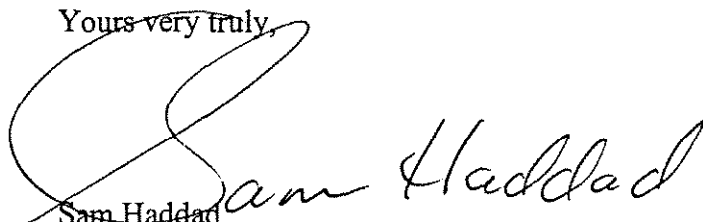
Based on section 552.303(c) of the Government Code, this office notified you by facsimile on August 3, 1998, that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) of the Government Code failure to comply would result in the legal presumption that the information at issue is public information.

To date, you have not provided our office with the information that was requested in our notification to you. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the act. Open Records Decision No. 195 (1978). Therefore, as provided by section 552.303(e), the information at issue is presumed to be public information.

Information presumed public must be released unless the governmental body demonstrates the existence of a *compelling interest* that overcomes this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). In the absence of compelling reasons as to why the information should not be made public, the requested information is presumed public and must be released. Open Records Decision No. 195 (1978); *but see* Gov't Code § 552.352 (distribution of confidential information is a criminal offense).²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

²The release of a compilation of offense reports in which an individual is listed as the suspect implicates that individual's common-law right to privacy. *See United States Dept' of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749 (1989).

Ref: ID# 118195

cc: Mr. Mark Gilliam
P.O. Box 2141
Rockwall, Texas 75087